

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Mark Fultz,)	Civil Action No. 2:19-cv-1867-RMG
)	
Plaintiff,)	
)	
vs.)	
)	
)	NOTICE OF REMOVAL
Andrew Pinckney Inn, LLC,)	
)	
Defendant.)	
)	

TO: UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA

PLEASE TAKE NOTICE that Defendant Andrew Pinckney Inn, LLC (“Defendant”), by and through its undersigned counsel, hereby removes this action from the Charleston County Court of Common Pleas to the United States District Court for the District of South Carolina, Charleston Division.

I. NATURE OF ACTION

1. On May 31, 2019, Plaintiff Mark Fultz (“Plaintiff”) filed a complaint against Defendant in the Charleston County Court of Common Pleas, Civil Action No. 2019-CP-10-2889, alleging a violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*

II. NOTICE OF REMOVAL IS TIMELY

2. Defendant was served with a copy of the Summons and Complaint on June 14, 2019.

3. Therefore, this Notice of Removal is timely as it was filed within 30 days of service. *See* 28 U.S.C. § 1446(b)(1) (“The notice of removal of a civil action or proceeding shall be filed

within thirty (30) days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based”).

III. FEDERAL JURISDICTION EXISTS

4. Pursuant to 28 U.S.C. § 1441(a), cases that are subject to removal include “any civil action brought in a state court of which the District Courts of the United States have original jurisdiction.”

5. Section 1331 provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

6. The only cause of action alleged in the Complaint is for violation of Title III of the ADA and, therefore, arises under the Constitution, laws, or treaties of the United States

7. Accordingly, the Court has federal question jurisdiction over these claims, and removal of this case to federal court is proper.

IV. REMOVAL TO THIS DISTRICT IS PROPER

8. Venue is proper in the United States District Court for the District of South Carolina, Charleston Division, because the Charleston County Court of Common Pleas sits within this federal district. *See* 28 U.S.C. §§ 1391(a), 1446(a).

V. REMOVAL REQUIREMENTS

9. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served to date upon Defendant in this matter are attached hereto as **Exhibit A**.

10. This Notice of Removal will promptly be served on Plaintiff, and notice of its filing will be promptly filed with the Clerk of Court for the Charleston County Court of Common Pleas,

pursuant to 28 U.S.C. § 1446(d) and Local Rule 83.IV.01, DSC.

VI. RESERVATION OF RIGHTS

11. Defendant reserves any and all rights to assert any defenses to Plaintiff's Complaint, including the right to file dispositive motions pursuant to Rule 12 of the Federal Rules of Civil Procedure.

12. In the event any question arises as to the propriety of the removal of this matter, Defendant requests the opportunity to present briefs, oral argument, and, if necessary, affidavits and other evidence in support of its position that removal is proper, in accordance with *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547 (2014), and *Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192 (4th Cir. 2008).

Respectfully submitted,

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July 1, 2019